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SENATE BILL 423
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Short Title: Foster Care Family Act.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ALIGN STATE LAW WITH FEDERAL LAW BY PROVIDING FOR THE SUPPORT OF HEALTHY DEVELOPMENT OF YOUTH IN FOSTER CARE THROUGH IMPLEMENTATION OF A REASONABLE AND PRUDENT PARENT STANDARD FOR DECISIONS MADE BY A FOSTER PARENT OR A DESIGNATED OFFICIAL FOR A CHILD CARE INSTITUTION AND REVISING THE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY REGARDING JUVENILE PLACEMENT UNDER THE JUVENILE CODE; TO PROVIDE LIABILITY INSURANCE FOR FOSTER PARENTS; TO REDUCE BARRIERS TO OBTAINING A DRIVERS LICENSE FOR FOSTER CHILDREN AND BY CLARIFYING THAT FOSTER PARENTS DO NOT VIOLATE FINANCIAL RESPONSIBILITY REQUIREMENTS BY ALLOWING FOSTER CHILDREN WITH THEIR OWN INSURANCE COVERAGE TO OPERATE A VEHICLE OWNED BY THE FOSTER PARENT; AND TO REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY A MEDICAID WAIVER FOR CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1.1. This act shall be known and may be cited as the "Foster Care Family Act."

PART II. REASONABLE AND PRUDENT PARENT STANDARD IN FOSTER CARE

SECTION 2.1. Part 1 of Article 1A of Chapter 131D of the General Statutes is amended by adding a new section to read:

"§ 131D-10.2A. Reasonable and prudent parent standard.

(a) The reasonable and prudent parent standard is the standard characterized by careful and sensible parental decisions that are reasonably intended to maintain the health, safety, and best interests of the child while at the same time encouraging the emotional and developmental growth of the child that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.



1 **(b)** Every child care institution shall designate an on-site official who is authorized to
2 apply the reasonable and prudent parent standard pursuant to this section.

3 **(c)** A caregiver, including the child's foster parent, whether the child is in a family
4 foster home or a therapeutic foster home, or the designated official at a child care institution
5 where the child is placed, or the county department of social services, must use the reasonable
6 and prudent parent standard when determining whether to allow a child in foster care to
7 participate in extracurricular, enrichment, and social activities.

8 **(d)** A caregiver, including the child's foster parent, whether the child is in a family
9 foster home or a therapeutic foster home, may be held liable for an act or omission of the child
10 if the caregiver fails to act in accordance with the reasonable and prudent parent standard under
11 this section. To the extent it may be applicable, the liability of a county department of social
12 services, or the Department of Health and Human Services, shall be strictly adjudicated
13 according to and in compliance with the terms of G.S. 153A-435, et seq., or G.S. 143-291, et
14 seq., as applicable. Nothing in this subsection is intended to abrogate or diminish the qualified
15 immunities of public officials acting in the course and scope of their employment.

16 **(e)** Unless otherwise ordered by a court with jurisdiction pursuant to G.S. 7B-200, a
17 caregiver, including the child's foster parent, whether the child is in a family foster home or a
18 therapeutic foster home, exercising the reasonable and prudent parent standard has the authority
19 to provide or withhold permission, without prior approval of the court or a county department
20 of social services, to allow a child in foster care, in the custody of a county department of social
21 services, or under the placement authority of a county department of social services through a
22 voluntary placement agreement to participate in normal childhood activities. Normal childhood
23 activities shall include, but are not limited to, extracurricular, enrichment, and social activities
24 and may include overnight activities outside the direct supervision of the caregiver for periods
25 of over 24 hours and up to 72 hours.

26 **(f)** The caregiver, including the child's foster parent, whether the child is in a family
27 foster home or a therapeutic foster home, or the designated official at a child care institution
28 where the child is placed, shall not be liable for injuries to the child that occur as a result of
29 acting in accordance with the reasonable and prudent parent standard.

30 **(g)** The immunity provided in subsection (f) of this section does not apply if it is
31 determined that the injuries to the child were caused by gross negligence, willful and wanton
32 conduct, or intentional wrongdoing, or arose out of the operation of a motor vehicle. Any
33 liability under this subsection that may be attributable to either the county department of social
34 services or the Department of Health and Human Services shall be strictly adjudicated
35 according to and in compliance with the terms of G.S. 153A-435, et seq., or G.S. 143-291, et
36 seq., as applicable. Nothing in this subsection is intended to abrogate or diminish the qualified
37 immunities of public officials acting in the course and scope of their employment.

38 **(h)** For any action under this section, the burden of proof with respect to a breach of the
39 reasonable and prudent parent standard shall be by clear and convincing evidence."

40 **SECTION 2.2.** G.S. 7B-505(b) reads as rewritten:

41 **"(b)** The court shall order the department of social services to make diligent efforts to
42 notify relatives and any custodial parents of the juvenile's siblings that the juvenile is in
43 nonsecure custody and of any hearings scheduled to occur pursuant to G.S. 7B-506, unless the
44 court finds such notification would be contrary to the best interests of the juvenile. In placing a
45 juvenile in nonsecure custody under this section, the court shall first consider whether a relative
46 of the juvenile is willing and able to provide proper care and supervision of the juvenile in a
47 safe home. If the court finds that the relative is willing and able to provide proper care and
48 supervision in a safe home, then the court shall order placement of the juvenile with the relative
49 unless the court finds that placement with the relative would be contrary to the best interests of
50 the juvenile."

51 **SECTION 2.3.** G.S. 7B-800.1(a)(4) reads as rewritten:

1 "(a) Prior to the adjudicatory hearing, the court shall consider the following:

2 ...

3 (4) Whether ~~relatives~~relatives, parents, or other persons with legal custody of a
4 sibling of the juvenile have been identified and notified as potential
5 resources for placement or support."

6 **SECTION 2.4.** G.S. 7B-901 reads as rewritten:

7 **"§ 7B-901. Dispositional hearing.**

8 The dispositional hearing shall take place immediately following the adjudicatory hearing
9 and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The
10 dispositional hearing may be informal and the court may consider written reports or other
11 evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian,
12 or custodian shall have the right to present evidence, and they may advise the court concerning
13 the disposition they believe to be in the best interests of the juvenile. The court may consider
14 any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, including
15 testimony or evidence from any person who is not a party, that the court finds to be relevant,
16 reliable, and necessary to determine the needs of the juvenile and the most appropriate
17 disposition. The court may exclude the public from the hearing unless the juvenile moves that
18 the hearing be open, which motion shall be granted.

19 At the dispositional hearing, the court shall inquire as to the identity and location of any
20 missing parent and whether paternity is at issue. The court shall include findings of the efforts
21 undertaken to locate the missing parent and to serve that parent and efforts undertaken to
22 establish paternity when paternity is an issue. The order may provide for specific efforts in
23 determining the identity and location of any missing parent and specific efforts in establishing
24 paternity. The court shall also inquire about efforts made to identify and notify ~~relatives~~
25 relatives, parents, or other persons with legal custody of a sibling of the juvenile, as potential
26 resources for placement or support."

27 **SECTION 2.5.** Article 9 of Chapter 7B of the General Statutes is amended by
28 adding a new section to read:

29 **"§ 7B-903.1. Juvenile placed in custody of a department of social services.**

30 (a) Except as prohibited by federal law, the director of a county department of social
31 services with custody of a juvenile shall be authorized to make decisions about matters not
32 addressed herein that are generally made by a juvenile's custodian, including, but not limited to,
33 educational decisions and consenting to the sharing of the juvenile's information. The court
34 may delegate any part of this authority to the juvenile's parent, foster parent, or another
35 individual.

36 (b) When a juvenile is in the custody or placement responsibility of a county
37 department of social services, the placement provider may, in accordance with
38 G.S. 131D-10.2A, provide or withhold permission, without prior approval of the court or
39 county department of social services, to allow a juvenile to participate in normal childhood
40 activities. If such authorization is not in the juvenile's best interest, the court shall set out
41 alternative parameters for approving normal childhood activities.

42 (c) If a juvenile is removed from the home and placed in the custody or placement
43 responsibility of a county department of social services, the director shall not allow
44 unsupervised visitation with or return physical custody of the juvenile to the parent, guardian,
45 custodian, or caretaker without a hearing at which the court finds that the juvenile will receive
46 proper care and supervision in a safe home.

47 (d) When a county department of social services having custody or placement
48 responsibility of a juvenile intends to change the juvenile's placement, the department shall give
49 the guardian ad litem for the juvenile notice of its intention unless precluded by emergency
50 circumstances from doing so. Where emergency circumstances exist, the department of social

1 services shall notify the guardian ad litem or the attorney advocate within 72 hours of the
2 placement change, unless local rules require notification within a shorter time period."

3 **SECTION 2.6.** Article 9 of Chapter 7B of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 7B-912. Juveniles 14 years of age and older; Another Planned Permanent Living**
6 **Arrangement.**

7 (a) In addition to the permanency planning requirements under G.S. 7B-906.1, at every
8 permanency planning hearing for a juvenile in the custody of a county department of social
9 services who has attained the age of 14 years, the court shall inquire and make written findings
10 regarding each of the following:

11 (1) The services provided to assist the juvenile in making a transition to
12 adulthood.

13 (2) The steps the county department of social services is taking to ensure that
14 the foster family or other licensed placement provider follows the reasonable
15 and prudent parent standard as provided in G.S. 131D-10.2A.

16 (3) Whether the juvenile has regular opportunities to engage in age-appropriate
17 or developmentally appropriate activities.

18 (b) At or before the last scheduled permanency planning hearing, but at least 90 days
19 before a juvenile attains 18 years of age, the court shall (i) inquire as to whether the juvenile
20 has a copy of the juvenile's birth certificate, Social Security card, health insurance information,
21 drivers license or other identification card, and any educational or medical records the juvenile
22 requests and (ii) determine the person or entity that should assist the juvenile in obtaining these
23 documents before the juvenile attains the age of 18 years.

24 (c) If the court finds each of the following conditions applies, the court shall approve
25 Another Planned Permanent Living Arrangement (APPLA) as defined by P.L. 113-183, as the
26 juvenile's primary permanent plan:

27 (1) The juvenile is 16 or 17 years old.

28 (2) The county department of social services has made diligent efforts to place
29 the juvenile permanently with a parent or relative or in a guardianship or
30 adoptive placement.

31 (3) Compelling reasons exist that it is not in the best interest of the juvenile to
32 be placed permanently with a parent or relative or in a guardianship or
33 adoptive placement.

34 (4) APPLA is the best permanency plan for the juvenile.

35 (d) If the court approves APPLA as the juvenile's permanent plan, the court shall, after
36 questioning the juvenile, make written findings addressing the juvenile's desired permanency
37 outcome."

38 **PART III. LIABILITY INSURANCE FOR FOSTER PARENTS**

39 **SECTION 3.1.** Article 36 of Chapter 58 of the General Statutes is amended by
40 adding a new section to read:

41 **"§ 58-36-44. Development of policy form or endorsement for personal liability insurance**
42 **for foster parents.**

43 (a) The Rate Bureau shall develop an optional policy form or endorsement to be filed
44 with the Commissioner for approval no later than May 1, 2016, that provides liability insurance
45 for foster parents licensed under Article 1A of Chapter 131D of the General Statutes to provide
46 foster care in a family foster home or therapeutic foster home. The policy form or endorsement
47 shall provide coverage for acts or omissions of the foster parent while the parent is acting in the
48 foster parent's capacity as a foster parent in a licensed family foster home or therapeutic foster
49 home licensed under Article 1A of Chapter 131D of the General Statutes.
50

1 (b) Nothing in this section is intended to require that the liability insurance policy or
2 endorsement required by this section cover an act or omission that results from any action or
3 inaction of gross negligence, willful and wanton conduct, or intentional wrongdoing that results
4 in injury to the child."

6 **PART IV. REDUCE DRIVING BARRIERS FOR FOSTER CHILDREN**

7 **SECTION 4.1.** Article 1 of Chapter 48A of the General Statutes is amended by
8 adding a new section to read:

9 **"§ 48A-4. Certain minors competent to contract.**

10 A minor who is 16 years of age or older and who is in the legal custody of the county
11 department of social services shall be qualified and competent to contract for the purchase of an
12 automobile insurance policy with the consent of the court with continuing jurisdiction over the
13 minor's placement under G.S. 7B-1000(b). The minor shall be responsible for paying the costs
14 of the insurance premiums and shall be liable for damages caused by the minor's negligent
15 operation of a motor vehicle. No State or local government agency, foster parent, or entity
16 providing services to the minor under contract or at the direction of a State or local government
17 agency shall be responsible for paying any insurance premiums or liable for damages of any
18 kind as a result of the operation of a motor vehicle by the minor."

19 **SECTION 4.2.** G.S. 20-11(i) reads as rewritten:

20 "(i) Application. — An application for a permit or license authorized by this section
21 must be signed by both the applicant and another person. That person must be:

- 22 (1) The applicant's parent or guardian;
- 23 (2) A person approved by the applicant's parent or guardian; or
- 24 (3) A person approved by the Division.
- 25 (4) With respect to minors in the legal custody of the county department of
26 social services, any of the following:
 - 27 a. A guardian ad litem or attorney advocate appointed to advocate for
28 the minor under G.S. 7B-601.
 - 29 b. The director of the county department of social services or the
30 director's designee.
 - 31 c. If no person listed in sub-subdivision a. or b. of this subdivision is
32 available, the court with continuing jurisdiction over the minor's
33 placement under G.S. 7B-1000(b)."

34 **SECTION 4.3.** G.S. 20-309 is amended by adding a new subsection to read:

35 "(a2) Notwithstanding any other provision of this Chapter, an owner's policy of liability
36 insurance issued to a foster parent or parents, which policy includes an endorsement excluding
37 coverage for one or more foster children residing in the foster parent's or parents' household,
38 may be certified as proof of financial responsibility, provided that each foster child for whom
39 coverage is excluded is insured in an amount equal to or greater than the minimum limits
40 required by G.S. 20-279.21 under some other owner's policy of liability insurance or a named
41 nonowner's policy of liability insurance. The North Carolina Rate Bureau shall establish, with
42 the approval of the Commissioner of Insurance, a named driver exclusion endorsement or
43 endorsements for foster children as described herein."

44 **SECTION 4.4.** G.S. 20-279.21(b) reads as rewritten:

45 "(b) ~~Such~~ Except as provided in G.S. 20-309(a2), such owner's policy of liability
46 insurance:

47 "

49 **PART V. STUDY MEDICAID WAIVER FOR CHILDREN WITH SERIOUS** 50 **EMOTIONAL DISTURBANCE**

1 **SECTION 5.1.(a)** The Department of Health and Human Services, Division of
2 Medical Assistance, shall design and draft, but not submit, a 1915(c) Medicaid waiver to serve
3 children with Serious Emotional Disturbance in home and community-based settings. The
4 Department may submit drafts of the waiver to the Centers for Medicare and Medicaid Services
5 (CMS) to solicit feedback but shall not submit the waiver for CMS approval until authorized by
6 the General Assembly.

7 **SECTION 5.1.(b)** The Department shall report the draft waiver, other findings, and
8 any other options or recommendations to best serve children with Serious Emotional
9 Disturbance to the Joint Legislative Oversight Committee on Health and Human Services by
10 December 1, 2015. Specifically, the report shall provide an in-depth analysis of the cost per
11 slot, including an analysis of the estimated number of waiver recipients who would be
12 transitioned from a facility to a home and community-based setting and the estimated number
13 of waiver recipients who would avoid placement in a facility.

14
15 **PART VI. EFFECTIVE DATE**

16 **SECTION 6.1.** Parts 2 and 4 of this act become effective October 1, 2015. The
17 remainder of this act is effective when it becomes law.